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Federal Communications Commission.

**Dana R. Shaffer,**

Chief, Wireline Competition Bureau.

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## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

#### 49 CFR Part 571

[Docket No. 2007-27027]

#### Conaway Hip-Hugger; Denial of Petition for Rulemaking

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Denial of petition for rulemaking.

**SUMMARY:** This notice denies a petition for rulemaking submitted by Mr. Brian J. Conaway, which, among other things, requested that the NHTSA amend the language and definitions in Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," to apply the standard to products that are not yet defined by the standard, such as belt positioning devices. Alternatively, the petitioner asked the agency to adopt a new definition, which would allow his product, the Hip-Hugger, to be recognized and defined as a child restraint device under FMVSS No. 213. NHTSA is denying the petition because

it does not see a safety need to apply a FMVSS to seat belt positioners and it does not believe that a denial would hamper child restraint system innovation or design. Furthermore, the agency is concerned that applying FMVSS No. 213 to seat belt positioners may actually degrade child occupant protection by promoting premature graduation to lap/shoulder belts.

**FOR FURTHER INFORMATION CONTACT:** *For technical issues:* Mr. Sean Doyle, NHTSA Office of Crashworthiness Standards. Telephone: (202) 366-1740. Facsimile: (202) 493-2990.

*For legal issues:* Ms. Deirdre Fujita, NHTSA Office of the Chief Counsel. Telephone: (202) 366-2992. Facsimile: (202) 366-3820.

Both officials can be reached by mail at the National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

##### A. FMVSS No. 213

Federal Motor Vehicle Safety Standard (FMVSS) No. 213, "Child restraint systems," has been in effect since January 1, 1970. It was established to "minimize the likelihood of death and injury to children in vehicle crashes or sudden stops. \* \* \*" <sup>1</sup> In 1979, the standard was upgraded to include certain dynamic performance requirements.<sup>2</sup> The standard applies to "child restraint systems" and stipulates several definitional requirements for the various child restraint systems used in motor vehicles. A "child restraint system" is defined in FMVSS No. 213 to be "any device except Type I or Type II seat belts, designed for use in a motor vehicle or aircraft to restrain, seat, or position children. \* \* \*" <sup>3</sup> Belt-positioning seats, built-in child restraint systems, backless child restraint systems, and car beds are among several of the applicable, defined "child restraint systems" covered by FMVSS No. 213. Seat belt positioning devices are not included in the definition of "child restraint system" in FMVSS No. 213, and are therefore not regulated by this standard.

<sup>1</sup> 34 FR 1172, January 24, 1969. Originally the standard was called "Child Seating Systems" and applied to motor vehicle equipment for seating and restraining a child being transported in a passenger car.

<sup>2</sup> 44 FR 72131, December 13, 1979.

<sup>3</sup> Standard No. 209 defines a Type I seat belt as "a lap belt for pelvic restraint," and a Type II seat belt as "a combination of pelvic and upper torso restraints."

##### B. The Petition

In a letter dated March 5, 2007, Mr. Brian Conaway petitioned the NHTSA to amend the language and definitional requirements of FMVSS No. 213 to permit what he said were advancements in child restraint design and to encourage new approaches to child protection. The petitioner believed that the effectiveness of the regulation is restricted by narrow definitions. The petitioner contended that there are many innovative child safety vehicle devices "which do not '\* \* \* restrain, seat, or position children \* \* \*' in a manner consistent with any of the current definitions," yet these devices are fully capable of complying with Standard 213's dynamic performance requirements. The petitioner further alleged that the "process of system 'definitions' \* \* \* limits innovation and advancements in child restraint design to those approaches which already exist and fit a product type already defined in the standard." Mr. Conaway went on to say, "this results in designing to a standard instead of designing to optimize a child's comfort and safety in the event of a crash." In particular, Mr. Conaway explained that the device which he developed, the *Hip-Hugger*, or *Conaway device*, is excluded from FMVSS No. 213, "not based on the crash data or protection it provides, but based on its inability to meet the definition of any of the recognized alternative and already existing approaches to child protection." The petitioner further noted, "this is in spite of the fact that it outperforms booster seats when crash tested under FMVSS-213 dynamic test standards." As a result, Mr. Conaway specifically requested that FMVSS No. 213 be "changed to allow for products not yet defined to be included as long as they meet the appropriate age, weight, and height related performance and labeling standards." Alternatively, Mr. Conaway petitioned the agency to adopt a new definition into FMVSS No. 213 that would permit his device to be recognized as a child restraint system.

Mr. Conaway's Hip Hugger device is a type of seat belt positioning device. Mr. Conaway first wrote to NHTSA about the Hip Hugger in 2001, asking whether it was a "child restraint system" under FMVSS No. 213. The following is a description of the device, taken from the agency's June 1, 2001, letter written in response to Mr. Conaway, in which we explained that the device was not a child restraint system:

You [Mr. Conaway] explained \* \* \* that one part of the product performs similarly to

a device called a "locking clip" used to secure some child restraint systems. A locking clip is a bracket into which the webbing of a Type II seat belt is threaded. A locking clip typically prevents movement of the latchplate and the webbing of the lap and/or shoulder belt. Your product is not used with child restraints, but acts similarly to a locking clip by "locking" the lap belt portion of the Type II belt over the child's lap. You would instruct parents to lock the lap belt tight enough over the child such that the child will not be able to slouch or scoot forward, even to bend his or her knees at the vehicle seat cushion's edge. Attached to the locking device is a plastic guide through which the shoulder belt portion of a Type II belt is threaded. The guide positions the shoulder belt "so that it does not ride across the neck of the child." \* \* \*

### C. Agency Past Assessment of Seat Belt Positioners

NHTSA has considered regulating seat belt positioning devices on several occasions, but has declined to do so. In a notice of proposed rulemaking (NPRM) dated March 16, 1994 (59 FR 12225), the agency requested comments on whether FMVSS No. 213 should be applied to belt positioning devices, and if so, what requirements would be appropriate. After considering comments on the issue, on July 6, 1995, the agency published a document explaining that it decided against regulating belt positioning devices in FMVSS No. 213 because it needed to "better assess the safety benefits of such rulemaking, and the feasibility of a test procedure and practicability of performance requirements" (60 FR at 35137). On January 31, 1996, petition for rulemaking, the American Academy of Pediatrics (AAP) voiced concern that some belt positioning devices had a tendency to interfere with proper lap and shoulder belt fit and often introduced slack in the shoulder belt. The AAP contended that since belt positioners are generally marketed as child protection devices, they should be exposed to the same certification and testing as child restraint systems, and should thus be regulated by FMVSS No. 213. The agency responded to the AAP petition by declining to undertake rulemaking on FMVSS No. 213, for the reasons given below. Instead, the agency proposed amending its consumer information regulations (49 CFR Part 575) to require proper warnings and labeling of the products (August 13, 1999 (64 FR 44164)),<sup>4</sup> and requested comments on an alternative or additional approach to establishing a

minimum dynamic performance requirement for belt positioners. NHTSA determined that it was inappropriate for belt positioners to be regulated by FMVSS No. 213 because the agency believed that doing so could have a negative net effect on child safety. The reasons for this conclusion were as follows:

- A comparison study of dynamic sled tests with the Hybrid II 3-year-old and 6-year-old dummies, restrained with either the lap/shoulder belt and one of three different belt positioners, or with a lap/shoulder belt only, indicated that belt positioning devices generally reduced belt performance of the lap/shoulder belt system, and led to increased head and chest injury criteria measurements, and head and knee excursions measurements for the 3-year-old dummy.<sup>5</sup> Testing with the 6-year-old also revealed the dummy's tendency to roll out of the seat belt positioner and around the shoulder belt, not to mention the possible introduction of belt slack, when a belt positioner was used.<sup>7</sup>

- A comparison study of tests for belt positioning devices to FMVSS No. 213 compliance tests compiled between 1993 and 1998 for both the 3-year-old and the 6-year-old child dummies positioned in either convertible child restraints or belt-positioning booster seats indicated that children are typically afforded greater levels of protection when using either type of child restraint than when using a lap/shoulder belt system with a belt positioner.<sup>8</sup>

- It was unknown whether the requirements of FMVSS No. 213 could adequately assess belt positioners and discern between acceptable and unacceptable performance. Also, abdominal loading could not be evaluated because the applicable child dummies were not fitted with abdominal sensors and no abdominal injury criteria existed.

- Child restraint systems offered additional benefits for toddlers over seat belt positioners, including (1) A high back and side support, which permit neck support and support in side

impacts, (2) an internal harness which diverts and distributes dynamic crash forces away from vulnerable soft tissues and organs, and (3) a comfortable fit, which discourages slouching and thus the repositioning of the lap belt over a child's soft abdominal area.

- Some consumers may prematurely graduate their child from a recommended age/size-appropriate child restraint such as a toddler seat or a belt-positioning booster seat to the lap/shoulder belt with seat belt positioner, thereby degrading the child's crash protection.<sup>9</sup>

In a **Federal Register** notice published on March 23, 2004 (69 FR 13503), the agency terminated the rulemaking regarding the consumer information requirement for seat belt positioners. The decision was made because crash data did not quantify a safety need to regulate seat belt positioners, and because NHTSA became concerned that the labeling proposed in the NPRM could be misconstrued by some parents as an agency recommendation that it would be acceptable to restrain 6-year-old children in a vehicle belt system if a belt-positioner were used. Such a conclusion would be contrary to the recommendation of the agency that 6-year-old children are best restrained when in a belt-positioning booster seat. Also, further testing was being planned for belt guidance devices pursuant to Anton's Law.<sup>10</sup> Section 3(b)(2) of Anton's Law directed the NHTSA to consider whether to establish injury performance requirements for seat belt fit when used with booster seats and other belt guidance devices.

In response to Section 3(b)(2) of Anton's Law, the agency analyzed several studies exploring the extent to which booster seats differ in how they affect the fit of a vehicle's belts on a child. The agency did determine that various booster seats could differ in how belts fit but was unable to conclude that the small differences translated into associated differences in the dynamic performance of a belt system in a crash. The agency also found that belt positioning devices improved belt fit, but was unable to conclude how these devices would affect belt performance when tested dynamically. The agency decided that proposing performance criteria for safety belt fit for booster

<sup>5</sup> These tests were conducted by the agency in 1994 in an attempt to better assess the benefits of a rulemaking for belt positioning devices as the Agency looked to amend FMVSS No. 213. See NHTSA Test Nos. 3101–3114.

<sup>6</sup> 64 FR 44166, August 13, 1999.

<sup>7</sup> "Evaluation of Devices to Improve Shoulder Belt Fit," DOT HS 808 383, Sullivan and Chambers, August 1994. The report is available from the National Technical Information Service, Springfield, VA 22161.

<sup>8</sup> 64 FR 44168, August 13, 1999. FMVSS No. 213 compliance test data from 1993 to 1998 can be found through the National Technical Information Service, Springfield, VA 22161.

<sup>9</sup> NHTSA recommends that children weighing over 40 lbs. be restrained in a booster seat until they are tall enough so that they can, without the aid of a booster seat: (1) Wear the shoulder belt comfortably across their shoulder, and secure the lap belt across their pelvis, and (2) bend their legs over the front of the seat when their backs are against the vehicle seat back.

<sup>10</sup> Pub. L. 107–318, 116 Stat. 2772.

<sup>4</sup> In the NPRM, NHTSA proposed to define "seat belt positioner" as "a device, other than a belt-positioning seat, that is manufactured to alter the positioning of Type I and/or Type II belt systems in motor vehicles."

seats or belt guidance devices was unwarranted.

#### *D. Correspondence on the Hip-Hugger*

As noted above, the agency first corresponded with Mr. Brian J. Conaway about the Hip-Hugger in 2001. At that time, Mr. Conaway requested an interpretation of whether the Hip-Hugger, a small, plastic device which attaches to Type II seat belts to restrain children weighing between 50 and 100 pounds (lb), would be classified as a child restraint system under FMVSS No. 213, and alternatively if it would be considered a seat belt positioner. In an interpretation letter dated June 1, 2001, the agency informed Mr. Conaway that his product did not meet the definition of a child restraint system as set forth in FMVSS No. 213.<sup>11</sup> The agency explained that Mr. Conaway's device was designed to position a seat belt, not to restrain, seat, or position children. The agency noted that at that time, it did not have a standard or regulation for seat belt positioners, but acknowledged that the description of the Hip-Hugger did seem to conform to the definition of a seat belt positioner proposed in the August 13, 1999 NPRM ("a device, other than a belt-positioning seat, that is manufactured to alter the positioning of Type I and/or Type II belt systems in motor vehicles"). In 2006 and 2007, Mr. Conaway wrote follow-up letters to NHTSA raising the same issues as those raised in his 2001 letters, to which NHTSA replied on October 26, 2006, and March 12, 2007. In each of the agency's responses, NHTSA maintained the position that the Hip-Hugger did not meet the definition of a child restraint system set forth in FMVSS No. 213 because the Hip-Hugger does not itself restrain, seat, or position a child occupant in a crash.

#### **III. Analysis of Petition**

The Agency's opinion regarding Mr. Conaway's device has not changed since its first correspondence with him in 2001; the petitioner has not suggested that the design of this device has been altered. The Hip-Hugger is a belt positioning device. The petitioner seeks to revise FMVSS No. 213's definition of child restraint system to include devices such as belt-positioning devices.

We do not agree to this suggestion for several reasons. First, there is no evidence of a real-world safety problem with seat belt positioners. There is no safety need for an FMVSS to apply to seat belt positioners or a need to incorporate seat belt positioners into

FMVSS No. 213. NHTSA has considered the safety need for the requested rulemaking, agency resources and agency priorities, and has determined that the petition should be denied.

Second, we do not believe that a denial "limits innovation and advancements in child restraint design" as the petitioner maintains. The main effect of the denial is that petitioner may not refer to it as a child restraint system or certify that it meets FMVSS No. 213. The petitioner may continue to produce and market his device even when FMVSS No. 213 does not apply to it. This denial does not hamper the production of the device in any way. Seat belt positioners are considered motor vehicle equipment and their manufacturers are thus subject to the requirements of 49 U.S.C. 30119 and 30120 concerning the recall and remedy of products with safety-related defects.

Third, we are denying the petition because the agency also remains concerned, as discussed in the August 13, 1999 NPRM, that FMVSS No. 213 is not an appropriate standard for the devices. Including seat belt positioners in FMVSS No. 213 could unintentionally encourage premature graduation to lap/shoulder belts with belt positioners, which could degrade a child's safety by inducing injuries, such as abdominal injuries, caused by submarining.<sup>12</sup> A recent study of abdominal injuries conducted by Partners for Child Passenger Safety showed that children aged four to eight years whose restraint use was suboptimal, were more than three times more likely to sustain an abdominal injury than optimally restrained children.<sup>13</sup> Additionally, since FMVSS No. 213 does not currently have abdominal injury limits, as none of the child test dummies have an abdominal insert capable of measuring injury levels, nor has an abdominal injury criterion been established for any of the child crash test dummies utilized in FMVSS No. 213, FMVSS No. 213 might not adequately distinguish "acceptable" performers from "unacceptable" ones, and thus a certification to the standard could be meaningless.

In April 2005, the Agency conducted dynamic testing in accordance with FMVSS No. 213 using the Hybrid III 6-year-old and 10-year-old dummies in booster seats, belt positioning devices, and vehicle lap/shoulder belts as part of

the preparation for the August 31, 2005 NPRM (70 FR 51731) to incorporate the Hybrid III 10-year-old dummy into FMVSS No. 213. The results substantiated the agency's past concerns with incorporating belt positioners into the current standard. On average, this testing produced head and chest readings for both dummies that were as high or higher when belt positioning devices were used compared to when only a lap/shoulder belt or a belt positioning booster was used.<sup>14 15</sup> Therefore, this data suggests that child belt positioning devices, which do not meet the standard's definitional requirements, do not generally perform better than other devices that do meet the standard's definitional requirements.

Contrary to Mr. Conaway's assertion that the definitions detailed in FMVSS No. 213 stifle child safety benefits, the current Standard has proven to be very effective. Real world crash data have shown that current child restraints, as defined by FMVSS No. 213, reduce the likelihood of fatalities in passenger car crashes by 71% for infants (less than one-year-old) and 54% for toddlers (one-to four-years-old). For infants and toddlers in light trucks, the corresponding reductions are 58% and 59%, respectively.<sup>16</sup> Also, belt-positioning booster seats lower the risk of injury to children aged four through seven years by 59 percent compared to the use of vehicle seat belts alone.<sup>17</sup>

#### **IV. Conclusion**

The agency has decided to deny Mr. Conaway's petition for rulemaking. For the reasons listed herein, the agency disagrees that the definitions in FMVSS No. 213 are too restrictive and therefore sees no reason to alter the definitional requirements at this time. Furthermore, because the agency does not believe that belt positioners offer the same level of occupant protection as age-appropriate child restraint systems, the agency is also denying Mr. Conaway's request to incorporate a new definition for belt positioning devices into FMVSS No. 213.

**Authority:** 49 U.S.C. 30162; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

<sup>14</sup> Associated sled test data can be found along with this petition response in Docket # 2007-27027.

<sup>15</sup> In accords with that suggested in the August 31, 2005 NPRM, the Hybrid III-10C dummy was positioned in both an upright seating posture and a slouched posture to determine if posture has an effect on the performance of belts and belt positioning devices. This dummy has yet to be adopted into FMVSS No. 213.

<sup>16</sup> 2005 Traffic Safety Facts, NHTSA.

<sup>17</sup> Journal of American Medical Association, June 2003.

<sup>11</sup> <http://isearch.nhtsa.gov/files/Conawaylockingmechanism.html>.

<sup>12</sup> Submarining occurs when the pelvis becomes unrestrained by the lap belt portion of a safety belt assembly and then slides under the lap belt in a frontal impact. As a result, the belt is free to enter the abdominal cavity and cause injury to the unprotected internal organs and lumbar spine.

<sup>13</sup> Annals of Surgery, January 2004.

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Issued on: December 11, 2008.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

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